

BARKER  
Appl. No. 10/542,030  
August 12, 2008

**AMENDMENTS TO THE DRAWINGS**

The attached sheet of drawings includes changes to Fig. 1. This sheet, which includes Figs. 1-3, replaces the original sheet including Figs. 1-3. In Figure 1, previously omitted external flange 7 and laparoscopic port LP have been added.

Attachment: Replacement Sheet(s)

**REMARKS/ARGUMENTS**

Claims 23-35, 39-41 and 43-45 are present in this application. By this Amendment, the drawings, the specification and claims 23, 24, 26-34 and 39-41 have been amended, claims 36-38 have been canceled, and claims 43-45 have been added. Reconsideration in view of the above amendments and the following remarks is respectfully requested.

At the outset, Applicant extends his appreciation to Examiner Anderson for his courtesy in conducting the telephone interview with Applicant's representative on August 12, 2008. The contents of the interview are summarized in the remarks below.

Claims 24, 26 and 28-34 were objected to. By this Amendment, references to "the sheet" and "the sheet material" have been changed to --the sheet of surgical material--. Withdrawal of the objection is requested.

Claims 26, 27, 29, 34 and 39 were rejected under 35 U.S.C. §112, second paragraph. The claims have been amended, and Applicant respectfully submits that the claims now more clearly satisfy the requirements of 35 U.S.C. §112. During the interview, Applicant's representative asked for clarification regarding the rejection of claims 26 and 34. After some discussion, Examiner Anderson indicated that the amendments correcting the references to "the sheet of surgical material" would obviate the rejection. Withdrawal of the rejection is requested.

Claims 23-35, 39 and 41 were rejected under 35 U.S.C. §102(b) over U.S. Patent No. 5,397,331 to Himpens et al. This rejection is respectfully traversed.

Claim 23 defines a deployment sleeve for passing down a laparoscopic port and a plunger for location within that sleeve. The plunger is thus located within the deployment sleeve, and the sleeve is locatable within a laparoscopic port. Claim 23 additionally requires the sheet of

surgical material to be located within the distal end of the deployment sleeve, i.e., within the middle of the three noted structures (plunger, deployment sleeve, laparoscopic port).

The Office Action references the trocar sheath 23 of Himpens as equivalent to the claimed "deployment sleeve" and the tube 20 of Himpens to be equivalent to the claimed "plunger." This conclusion, however, as discussed during the interview, is a mischaracterization of the Himpens patent. Himpens describes that the trocar sheath 23 is "percutaneously passed through the abdominal wall" of the patient. See col. 5, lines 62-65. As such, the trocar sheath 23 in Himpens is more appropriately equivalent to the "laparoscopic port," in that it is the rigid element that is inserted through the incision in the abdominal wall to provide access to the peritoneal cavity.

In an effort to clarify this distinction, claim 23 has been amended to positively define the three-part structure including a laparoscopic port, a deployment sleeve for passing down the laparoscopic port, and the plunger for location within the sleeve. Himpens thus appears to lack at least the claimed deployment sleeve that passes down the laparoscopic port. During the interview, Examiner Anderson agreed that this feature of the invention appeared to be distinguishable from the Himpens patent. Applicant thus respectfully submits that the rejection of claim 23 should be withdrawn.

In addition, claim 23 recites that the deployment sleeve is provided with an external flange to control the length of insertion of the deployment sleeve in the laparoscopic port. This subject matter has been clarified in this Amendment, reciting that the deployment sleeve is provided with an external flange defining an insertion stop for the deployment sleeve in the laparoscopic port. In this context, the Office Action refers to "an external flange" in Himpens with reference to Fig. 10. In this context, however, as discussed during the interview, if the

Office Action is regarding the collar (unreferenced) at the base of the trocar sheath 123 as being equivalent to the claimed "external flange," Applicant submits that this cannot be correct because that collar cannot be used to control the length of insertion of the trocar sheath 123 within a laparoscopic port. Indeed, the referenced element (trocar sheath 123) on which the collar is provided is the laparoscopic port. If the Office Action rather refers to the collar (also unreferenced) at the base of the external guide tube 122 as being equivalent of the claimed "external flange," not only does this contrast with the Office Action's earlier statement that the trocar sheath 23, 123 is equivalent to the "deployment sleeve," but it is clear that the outside diameter of the collar at the base of the external guide tube 122 is much too small to engage with any portion of the trocar sheath 123, and the structure is thus incapable of controlling the length of insertion of the external guide tube 122 in the trocar sheath 123. That is, the structure does not define an insertion stop for the deployment sleeve in the laparoscopic port. For this reason also, Applicant respectfully submits that the rejection of claim 23 should be withdrawn.

For the sake of clarity, Fig. 1 has been amended to show an external flange on the deployment sleeve and to show the laparoscopic port. The specification has been amended to include a reference (7) for the external flange and a reference (LP) for the laparoscopic port. Applicant submits that no new matter has been added.

With regard to the dependent claims, Applicant submits that these claims are allowable at least by virtue of their dependency on an allowable independent claim.

Reconsideration and withdrawal of the rejection are respectfully requested.

Claim 40 was rejected under 35 U.S.C. §103(a) over Himpens in view of "optimization of ranges." Without conceding this rejection, Applicant submits that it would not have been obvious to modify the Himpens structure to correct those deficiencies noted above with regard to

BARKER  
Appl. No. 10/542,030  
August 12, 2008

claim 23. As such, Applicant submits that claim 40 is allowable at least by virtue of its dependency on an allowable independent claim. Withdrawal of the rejection is respectfully requested.

Claims 43-45 have been added. Claims 43 and 44 reference features previously defined in claim 27, and claim 45 references features previously defined in claim 29. Applicant submits that these claims are also allowable at least by virtue of their dependency on an allowable independent claim.

In view of the foregoing amendments and remarks, Applicant respectfully submits that the claims are patentable over the art of record and that the application is in condition for allowance. Should the Examiner believe that anything further is desirable in order to place the application in condition for allowance, the Examiner is invited to contact Applicant's undersigned attorney at the telephone number listed below.

Prompt passage to issuance is earnestly solicited.

Respectfully submitted,

**NIXON & VANDERHYE P.C.**

By:           /Alan M. Kagen/            
                                Alan M. Kagen  
                                Reg. No. 36,178

AMK:jls  
901 North Glebe Road, 11th Floor  
Arlington, VA 22203-1808  
Telephone: (703) 816-4000  
Facsimile: (703) 816-4100